

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3046 of 1998

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN

and

MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

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GURDHARLAL JAGABHAI PATEL DEC THRO'HEIRS & LEGAL REPRES

Versus

STATE OF GUJARAT

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Appearance:

MR AN PATEL for Petitioner

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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

MR.JUSTICE A.R.DAVE

Date of decision: 01/05/98

C.A.V JUDGEMENT

The petitioner has approached this Court with a prayer that Respondents Nos. 1 & 3 ie., State of Gujarat and Surat Municipal Corporation be directed to hand-over possession of land bearing Survey No. 21 of Village

Umarwada and he has also prayed that Entry No. 623 made in records of rights of village Umarwada, Taluka-Chauryasi, District-Surat be quashed. By virtue

of the said entry, it has been recorded that the land referred to hereinabove was acquired for Surat Municipal Corporation - Respondent No. 3 herein.

2. The petitioner has submitted in the petition that his grand-father Shri Jagabhai Motibhai was tenant in respect of the land in question. The said land originally belonged to Parsi Panchayat Trust. He has submitted that Late Shri Jagabhai died on 1st February, 1956, and thereafter, the petitioner's father Shri Gordhanbhai became Tenant as legal heir of Late Shri Jagabhai Gordhanbhai Patel.

3. The petitioner, claiming tenancy right in respect of land in question, had filed an application under Section 70 (b) of the Bombay Tenancy & Agricultural Lands Act, 1948 {hereinafter referred to as "the Act"} before the Additional Mamlatdar & ATL (Tenancy), being Tenancy case No. 12 of 1998. The said application was not entertained as the land in question had been acquired in 1964 for Surat Municipal Corporation and at present the land in question has become part of T.P Scheme No. 8 of Surat Municipal Corporation. As the Act is applicable to only agricultural lands, and as the land in question has now become non-agricultural land, included in the Commercial Zone of T.P Scheme No. 8, the Tenancy Case No. 12 of 1998 filed by the petitioner was not entertained.

4. Learned counsel appearing for the petitioner has submitted that the petitioner is having tenancy right in respect of land in question as his father was tenant, and therefore, petitioner should be given possession of the land in question.

5. We have heard the learned counsel. Upon perusal of the record, it is clear that the land in question was acquired in 1964 and possession of the land in question had also been given to Surat Municipal Corporation, and as at present, the land in question is no more an agricultural land, provision of Section 70 (b) of the Act cannot apply to the said land, and therefore, the petitioner cannot have any right in respect of the land

in question as a Tenant. Moreover, at the time of acquisition proceedings neither the petitioner nor his father had made any claim before the concerned authority with regard to the claim of tenancy.

6. In the circumstances, prayer of the petitioner with regard to directing Surat Municipal Corporation to hand-over possession of the land in question to him can never be entertained. It appears that petitioner had filed an application under Section 70 (b) under the Act for the first time in the year 1998 when the land in question was not an agricultural land, and therefore, his application was rightly not entertained by the Addl. Mamatdar & ATL. In the circumstances, we do not see any substance in the petition and the petition is dismissed.

[K. Sreedharan, CJ.]

[A.R Dave, J.]

Prakash\*